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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,545	04/07/2001	Donovan R. Lane	263-05	4954

7590
Dean P. Edmundson
P.O. Box 179
Burton, TX 77835

12/16/2003

EXAMINER

LAM, ANN Y

ART UNIT	PAPER NUMBER
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1641

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 10

Application Number: 09/828,545
Filing Date: April 07, 2001
Appellant(s): LANE, DONOVAN R.

Dean P. Edmundson
For Appellant

EXAMINER'S ANSWER

Art Unit: 1641

This is in response to the appeal brief filed January 1, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 3 and 4 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,984,900

Mikkelsen

11-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 3 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Mikkelsen, 5,984,900. Mikkelsen discloses a cartridge (1) including anterior and posterior ends and a plunger (35) positioned within said cartridge; wherein said plunger is moveable in said cartridge to dispense said medicament through said anterior end; wherein said cartridge further comprises an interior wall with tab means (structure near 19, projecting inwardly into said cartridge, or alternatively, structure near 7, projecting inwardly into said cartridge) projecting into said cartridge from said interior wall; wherein said tab means is spaced a predetermined distance from said posterior end; and wherein said plunger is located between said tab means and said anterior end.

As to claim 4, tab means comprises a ring projecting inwardly into said cartridge.

(11) Response to Argument

Appellant's arguments with respect to the rejections of claims 3 and 4 under 35 USC 102(e) as being anticipated by Mikkelsen remain unpersuasive for the reasons set forth below.

Appellant argues in the brief, on page 4:

'The Mikkelsen patent does not describe a cartridge for a medicament which includes tab means in the interior of the cartridge as described and claimed by applicant.'

In response, Examiner reasserts that Mikkelsen does describe a cartridge (1) for a medicament which includes tab means (structure near 19, projecting inwardly into said cartridge, or alternatively, structure near 7, projecting inwardly into said cartridge) in the interior of the cartridge as described and claimed by Appellant.

Applicant also argues in the brief, on page 4:


'The aspect of the Mikkelsen device which is most analogous to applicant's cartridge is the ampoule containing the medicine. That ampoule does not include tab means as required in applicant's cartridge. Certainly, Mikkelsen does not show or describe tab means comprising a ring in the interior of a medicament cartridge. Furthermore, there would be no purpose served by a tab means within Mikkelsen's ampoule.

In response, Examiner asserts that the Mikkelsen ampoule does include tab means, comprising a ring (structure near 19, projecting inwardly into ampoule) in the interior of the cartridge. Furthermore, Examiner interprets element (1) in the Mikkelsen device as the cartridge as claimed by Appellant, and that nothing in Appellant's claims precludes this interpretation. Thus, as described above and also in the Office action, the tab means may alternatively be the structure near (7), projecting inwardly into the cartridge.



For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 1641

Respectfully submitted,

A.L. 
November 5, 2003

Conferees
Long Le (SPE, AU 1641)
James Housel (SPE, AU 1648)

Dean P. Edmundson
P.O. Box 710
Windsor, CO 80550